

Law 93-400 and subject to the procedures set forth in such Public Law, to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies. In formulating such regulations and procedures the Administrator of the Office of Federal Procurement Policy shall, in consultation with the Small Business Administration, conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

(Pub. L. 95-507, title II, §222, Oct. 24, 1978, 92 Stat. 1771.)

#### REFERENCES IN TEXT

Public Law 93-400, referred to in text, is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, known as the Office of Federal Procurement Policy Act, which is classified principally to this chapter (§401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

#### CODIFICATION

Section was not enacted as part of the Office of Federal Procurement Policy Act which comprises this chapter.

#### SUPERSURE OF INCONSISTENT STATUTORY PROVISIONS

Pub. L. 96-83, §11, Oct. 10, 1979, 93 Stat. 652, provided that: "The provisions of the Act [Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, see Short Title note set out under section 401 of this title] as amended by this Act [see Short Title of 1979 Amendment note set out under section 401 of this title] shall supersede the provisions of section 222 of the Act of October 24, 1978, entitled 'An Act to amend the Small Business Act and the Small Business Investment Act of 1958' (41 U.S.C. 405a) to the extent they are inconsistent therewith."

#### DEFINITIONS

The definitions in section 637c of Title 15, Commerce and Trade, apply to this section.

### § 405b. Conflict of interest standards for individuals providing consulting services

#### (a) Issuance of policy and regulations

Not later than 90 days after October 1, 1988, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter Government-wide regulations shall be issued under the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) which set forth—

(1) conflict of interest standards for persons who provide consulting services described in subsection (b) of this section; and

(2) procedures, including such registration, certification, and enforcement requirements as may be appropriate, to promote compliance with such standards.

#### (b) Services subject to regulations

The regulations required by subsection (a) of this section shall apply to the following types of consulting services:

(1) advisory and assistance services provided to the Government to the extent necessary to identify and evaluate the potential for con-

licts of interest that could be prejudicial to the interests of the United States;

(2) services related to support of the preparation or submission of bids and proposals for Federal contracts to the extent that inclusion of such services in such regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

(3) such other services related to Federal contracts as may be specified in the regulations prescribed under subsection (a) of this section to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States.

#### (c) Report to Congress by Comptroller General on effectiveness of regulations

The Comptroller General shall report to Congress not later than one year after October 1, 1988, his assessment of the effectiveness of the regulations prescribed under this section.

#### (d) Intelligence activities exemption; annual report by Director of Central Intelligence

Intelligence activities as defined in section 3.4(e) of Executive order 12333 or a comparable definitional section in any successor order may be exempt from the regulations required by subsection (a) of this section: *Provided*, That the Director of Central Intelligence shall report to the Intelligence and Appropriations Committees of the Congress no later than January 1, 1990, and annually thereafter delineating those activities and organizations which have been exempted from the regulations required by subsection (a) of this section in accordance with the provisions of this subsection.

#### (e) Adverse effect determination by President prior to issuance of regulations; report to Congressional committees; voiding of regulations requirement

The President shall, before issuance of the regulations required by subsection (a) of this section, determine if the promulgation of such regulations would have a significantly adverse effect on the accomplishment of the mission of the Department of Defense or other Federal Government agencies: *Provided*, That if the President determines that the regulations required by subsection (a) of this section would have such an adverse effect, the President shall so report to the appropriate committees of the Senate and the House of Representatives, stating in full the reasons for such a determination: *Provided further*, That in the event of submission of a report to the committees containing an adverse effect determination, the requirement for the regulations prescribed by subsection (a) of this section shall be null and void.

(Pub. L. 100-463, title VIII, §8141, Oct. 1, 1988, 102 Stat. 2270-47.)

#### REFERENCES IN TEXT

The Office of Federal Procurement Policy Act, referred to in subsec. (a), is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to this chapter (§401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title.

Executive order 12333, referred to in subsec. (d), is set out as a note under section 401 of Title 50, War and National Defense.

#### CODIFICATION

Section was enacted as part of the Department of Defense Appropriations Act, 1989, and not as part of the Office of Federal Procurement Policy Act which comprises this chapter.

### § 406. Administrative powers

Upon the request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this chapter; and

(2) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

(Pub. L. 93-400, § 7, Aug. 30, 1974, 88 Stat. 798.)

### § 407. Responsiveness to Congress

#### (a) Annual report on activities

The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

#### (b) Submission of policy matter or regulation to Congressional committees

At least 30 days prior to the effective date of any policy or regulation prescribed under section 405(a) of this title, the Administrator shall transmit to the Congress a report on the proposed policy or regulation. Such report shall include—

(1) a full description of the policy or regulation;

(2) a summary of the reasons for the issuance of such policy or regulation; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation.

#### (c) Waiver of notice requirement by President

In the case of an emergency, the President may waive the notice requirement of subsection (b) of this section by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any policy or regulation.

(Pub. L. 93-400, § 8, Aug. 30, 1974, 88 Stat. 798; Pub. L. 96-83, § 5, Oct. 10, 1979, 93 Stat. 651; Pub. L. 98-191, § 8(a), Dec. 1, 1983, 97 Stat. 1331.)

#### AMENDMENTS

1983—Subsec. (a). Pub. L. 98-191, § 8(a)(1), struck out paragraph designation “(1)” before “The Administrator shall keep” and struck out pars. (2), (3), and (4) which related, respectively, to a proposal to congress by the Administrator of a uniform procurement system, a rec-

ommendation to congress of changes in legislation relating to procurement by executive agencies, and a proposal to congress for a management system to implement and enforce a uniform procurement system.

Subsec. (b). Pub. L. 98-191, § 8(a)(2)(A), substituted “At least 30 days prior to the effective date of any policy or regulation prescribed under section 405(a) of this title, the Administrator shall transmit to the Congress a report on the proposed policy or regulation” for “At least 30 days prior to the effective date of any policy prescribed under section 405(h) of this title, the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy”.

Pub. L. 98-191, § 8(a)(2)(B), inserted “or regulation” after “policy” wherever appearing in second sentence.

Subsec. (c). Pub. L. 98-191, § 8(3), substituted “any policy or regulation” for “any policy”.

1979—Subsec. (a). Pub. L. 96-83, § 5(a), designated existing provisions as par. (1), struck out references to President of the Senate and Speaker of the House, and provisions requiring the report to contain appropriate legislative recommendations, and added pars. (2) to (4).

Subsec. (b). Pub. L. 96-83, § 5(b)(1), (2), substituted “any policy prescribed under section 405(h)” for “any major policy or regulation prescribed under section 405(a)”, and “policy” for “policy or regulation” wherever appearing.

Subsec. (c). Pub. L. 96-83, § 5(b)(3), substituted “policy” for “major policy or regulation”.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-83 effective Oct. 1, 1979, see section 12 of Pub. L. 96-83, set out as a note under section 401 of this title.

PLAN FOR ALTERNATIVES TO INCREASE OPPORTUNITIES TO ACHIEVE FULL AND OPEN COMPETITION; STUDY TO CONGRESS, CRITERIA, ETC.

Pub. L. 98-369, div. B, title VII, § 2753, July 18, 1984, 98 Stat. 1203, directed Administrator of Office of Federal Procurement Policy, in consultation with Secretary of Defense, Administrator of General Services and Administrator of the National Aeronautics and Space Administration, not later than Jan. 31, 1985, to complete a study of alternatives and recommend to Congress a plan to increase opportunities to achieve full and open competition on the basis of technical qualifications, quality, and other factors in the procurement of professional, technical, and managerial services.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 421 of this title.

### § 408. Applicability of existing laws

The authority of an executive agency under any other law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 405 of this title.

(Pub. L. 93-400, § 9, Aug. 30, 1974, 88 Stat. 799.)

### § 409. Effect on existing regulations

Procurement policies, regulations, procedures, or forms in effect on December 1, 1983, shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.

(Pub. L. 93-400, § 10, Aug. 30, 1974, 88 Stat. 799; Pub. L. 96-83, § 6, Oct. 10, 1979, 93 Stat. 651; Pub. L. 98-191, § 8(b), Dec. 1, 1983, 97 Stat. 1331.)

#### AMENDMENTS

1983—Pub. L. 98-191 substituted “Procurement policies, regulations, procedures, or forms in effect on De-